

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.**

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In the Matter of )  
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Federal-State Joint Board on )  
Universal Service )  
)  
Emergency Petition of AMSC Subsidiary Corp. )  
For Clarification of 47 C.F.R. §§ 54.601(c), )  
54.506 )

CC Docket No. 96-45

DA 00-237

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**REPLY COMMENTS OF AMSC SUBSIDIARY CORPORATION**

AMSC Subsidiary Corporation ("AMSC") hereby replies to comments filed by the United States Telecom Association ("USTA") in response to AMSC's petition for clarification of rules relating to the Commission's Universal Service Fund ("USF") support for rural health care providers ("RHCPs"). As the Commission recognizes, there is currently a severe shortage of telecommunications services on Native American tribal lands, and AMSC is in a position *now* to offer critical emergency communications services to residents of these areas. Contrary to the concerns raised by USTA, the Commission has the statutory authority to take the actions needed to help make these life-saving services a reality.

**Background**

On November 24, 1999, AMSC filed with the Commission a Petition requesting clarification of certain rules applicable to its program for Universal Service Fund ("USF") support for rural health care providers ("RHCPs"). AMSC urged the Commission either to rule that its rural health care USF program will support the leasing of AMSC's MSS terminals or waive any rules precluding such support. AMSC also requested clarification regarding the determination of the "urban rate" for purposes of calculating the discount applicable to the provision of emergency communications service on Native American lands.

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USTA's comments indicate that it is sympathetic to AMSC's underlying goals, but it nonetheless seeks clarification of certain aspects of the proposal and challenges others. USTA says that the Petition does not make clear what party will lease AMSC's emergency call boxes or which entity will receive the universal service support for such service. *Id.* at 3. USTA states that AMSC appears to be proposing its emergency communications service as "the sole type of service" and suggests that AMSC has not accounted for the competitive bidding process that must precede a subsidized discount for a rural health care provider. *Id.* With respect to AMSC's request for rural health care support for the leasing of its terminals, USTA states that the relevant statutory provision does not permit subsidies for the cost of such equipment. *Id.* at 4. USTA also says that AMSC appears to be requesting rural health care subsidies for non-health care services such as communications to police and fire departments. *Id.* Finally, USTA argues that rural health care providers should not receive any subsidy for purchasing AMSC's service, since the cost of rural and urban MSS is the same. *Id.* at 6. USTA adds that even if the urban rate here is assumed to be the rate for urban emergency 911 service, that rate should not be assumed to zero, but instead should account for the collective costs for such service, funded through end-user taxes and other means.<sup>1/</sup> *Id.* at 5.

### **Discussion**

The urgent need for critical, safety-of-life and other telecommunications services on Native American tribal lands has been established in Commission-sponsored hearings and in the Commission's ongoing rulemaking proceedings. While AMSC recognizes that it does not

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<sup>1/</sup> In addition, Motorola and Iridium North America (collectively, "Motorola") jointly filed comments on AMSC's Petition. Motorola generally supports AMSC's Petition and urges the Commission to do all it can to remove as quickly as possible all unnecessary regulatory burdens that limit or inhibit the provision of telecommunications services and equipment to unserved areas in the United States.

represent the long-term solution to this need and supports the ultimate development of terrestrial infrastructure in these areas, it is likely to be years before such buildout is complete.<sup>2/</sup> AMSC can fill this service void *today*, and what is needed now is action by the Commission that will provide the necessary funding to make these services a reality for tens of thousands of Native Americans.

**I. The Relevant Rural Health Care Provider Will Make the Request for Support And, Following Competitive Bidding, Will Choose the Most Cost-effective Emergency Communications Service Available**

USTA expresses concern that AMSC and participating RHCPs appear to be moving forward in a manner inconsistent with the procedures of the Commission's rural health care support program, by having AMSC itself seek the USF support and by trying to avoid the required competitive bidding process. This concern is misplaced. First, it will be RHCPs, most likely relevant tribal health care agencies, that submit the request for rural health care support to the Commission. Such public agencies or departments are eligible for rural health care support under the Communications Act and the Commission's rules, even if the communications in question are initiated by end-user customers.<sup>3/</sup> 47 C.F.R. § 54.601(a)(2)(iii).

Second, before leasing the emergency call boxes and using AMSC's service, these RHCPs will comply with the Commission's rules and request competing service proposals from other providers, and, as required, they will select another provider if it offers the most cost-

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<sup>2/</sup> See, e.g., Speech of FCC Chairman William Kennard, Public Hearing, Albuquerque, New Mexico (January 29, 1999).

<sup>3/</sup> In its May 1997 Report and Order in this docket, the Commission ruled that terminating services are supportable when they are billed to the RHCP, as in the case of wireless telephone air time charges. Report and Order, Federal-State Joint Board on Universal service, CC Docket No. 96-45, 12 FCC Rcd 8776, para. 626 (1997) ("*USF Order*"). In the instant case, calls over AMSC's emergency call boxes would terminate with the RHCP, and the RHCPs would be charged for these MSS transmissions.

effective service plan. AMSC, however, continues to believe that its emergency communications proposal will be the most cost-effective choice available to these tribal RHCPs and that it is best prepared to provide crucial benefits to these tribal areas if the Commission takes the necessary regulatory action.<sup>4/</sup>

## **II. Rural Health Care Funds Would Be Used Only to Support Those Emergency Communications Services That Are Necessary for the Provision of Health Care Services**

AMSC has held numerous discussions with various Native American tribal representatives with extensive expertise on the need for key telecommunications service in tribal areas. Based on these discussions, AMSC expects that any emergency call boxes deployed in Native American tribal lands would be used primarily for communications “necessary for the provision of health care services,” the statutory standard for the scope of services supported by this program.<sup>5/</sup> 47 U.S.C. § 254(h)(1)(A). AMSC would work with participating RHCPs to monitor the overall usage of these emergency terminals, however, and to the extent that these facilities are used for emergency purposes unrelated to health care, AMSC agrees to take the steps necessary to ensure that it receives subsidies only for that portion of traffic that meets the rural health care program standard. Given the magnitude of the benefits from the proposed emergency communications service, the Commission should adopt a flexible approach towards the enforcement of this standard, including permitting subsequent repayments as necessary by AMSC or other telecommunications carriers providing such service.

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<sup>4/</sup> As the telecommunications carrier providing these emergency communications services, AMSC itself would receive the actual subsidy in the form of an offset to its universal service contribution. *See* 47 C.F.R. § 54.611.

<sup>5/</sup> In these tribal areas, where the nearest medical facilities are often as far away as fifty miles, emergency health care assistance is often provided initially by police or fire department personnel trained to be “first responders” in such situations.

### **III. The Commission Should Provide Rural Health Care Support to Native American Tribal RHCPs for the Leasing of Emergency Call Boxes**

Contrary to USTA's assertion, the Communications Act gives the Commission discretion to provide support for the leasing of AMSC's proposed emergency call boxes. In its May 1997 *USF Order*, the Commission found that there is a general need for development of the telecommunications infrastructure available to RHCPs, and that it has authority to establish rules to implement a program of universal service support for such infrastructure development as a means for enhancing RHCP access to advanced telecommunications and information service under Section 254(h)(2)(A) of the Communications Act. *USF Order* at para. 634. Pursuant to this finding, in its September 1999 FNPRM regarding the promotion of telephone subscribership in underserved areas, the Commission asked for comment on various issues related to the need for telecommunications infrastructure development for RHCPs.<sup>6/</sup>

The deployment of emergency call boxes would clearly expand the telecommunications infrastructure available to RHCPs, and it is critical that the Commission take advantage of this statutory authority and promote such development. The shortage of crucial emergency services in tribal lands appears in large part due to a lack of sufficient telecommunications equipment, and the Commission should amend its RHCP framework to allow support for tribal health care providers' purchase of MSS terminals and other equipment that could be used to receive such services on a cost-effective basis. Without such support, tribal authorities are unlikely to be able to implement rapid, efficient solutions -- including AMSC's immediately-available

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<sup>6/</sup> See Further Notice of Proposed Rulemaking, Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas, CC Docket No. 96-45, 64 Fed. Reg. 52738, paras. 134-139 (1999).

emergency communications system<sup>7/</sup> -- to these crucial public safety and health care concerns.

**IV. The Commission Should Apply Rational Principles When Calculating How Much Rural Health Care Support Should be Directed to AMSC's Emergency Communications Proposal**

Under the Commission's rural health care program, RHCPs can receive a supported telecommunications service at a rate that is "reasonably comparable to [a rate] charged for similar services in urban areas in that state." 47 U.S.C. § 254(h)(1)(A). The subsidy provided by the rural health care program for such service is equal to the difference between this "urban rate" and the "rural rate" for such service.<sup>8/</sup> As described above, USTA believes that the "similar service" for AMSC in the instant context should be urban MSS; as a result, says USTA, a rural health care provider should not receive support for the purchase of AMSC's emergency MSS, because the cost of AMSC's service does not vary with geography.

The Commission should reject USTA's position as counter to the principle of technological neutrality, which is fundamental to the Commission's universal service policy.

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<sup>7/</sup> As described in its Petition, AMSC estimates that the cost of leasing and maintaining each terminal would likely be as much as \$388.00 per month. Specifically, AMSC estimates that it would cost approximately \$213.00 per month for a RHCP to lease an AMSC terminal, with the cost of maintaining each terminal amounting to \$175.00 per month. This estimate is based on the installation of 1,000 terminal units and could vary depending on the number of units that are actually installed.

<sup>8/</sup> In a November 1999 order, the Commission modified its method for calculating the amount of support for RHCPs. Effective July 1, 2000, the program Administrator will assume that the "base rate" for rural and urban telecommunications services is the same, and as an initial matter will only include in that support the added costs resulting from the greater distance-based charges for rural service. However, if a telecommunications carrier or RHCP reasonably determines that the base rate for a rural telecommunications service in a given area is not reasonably comparable to similar telecommunications services in urban areas in that state, that carrier or RHCP can request that the Administrator conduct a more comprehensive support calculation that takes into account a demonstrated rural/urban differential. *See* 47 C.F.R. § 54.609(a); Fifteenth Order on Reconsideration, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, paras. 32-37 (rel. November 1, 1999).

*USF Order* at para. 49. Such a decision would mean that RHCPs would *never* receive a subsidy when receiving service from AMSC and other MSS providers. Users of terrestrial-based landline and wireless systems, meanwhile, would receive significant subsidies, reflecting the higher costs of such systems in rural areas. As a result, these operators would gain a substantial competitive advantage, making immaterial the relative cost-effectiveness of MSS systems.

Rather than define the “similar service” for AMSC and other emergency MSS providers as urban MSS, the Commission should clarify that the appropriate “urban rates” for such emergency services are the rates at which health care providers in urban areas receive telecommunications services that serve an equivalent health care function. On this point, while AMSC has previously argued that this rate should be zero, it does not dispute USTA’s assertion the cost of urban emergency 911 calls might include collective costs such as end-user taxes. Accordingly, AMSC would not object to a requirement that the rural health care administrator account for such costs in calculating the amount of support that RHCPs receive when purchasing AMSC’s emergency communications services.<sup>9/</sup>

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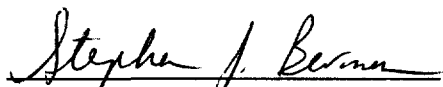
<sup>9/</sup> If AMSC provides emergency MSS to RHCPs, it will ask the rural health care Administrator to conduct a comprehensive support calculation that accounts for cost factors such as those identified by USTA. *See* 47 C.F.R. 54.609(a)(2).

**Conclusion**


Therefore, based on the foregoing, AMSC Subsidiary Corporation continues to urge the Commission to expeditiously take the steps requested by AMSC in its Petition.

Respectfully submitted,

**AMSC SUBSIDIARY CORPORATION**



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March 6, 2000



## **CERTIFICATE OF SERVICE**

I, Marilyn Murphy, a secretary to the law firm of Fisher Wayland Cooper Leader & Zaragoza L.L.P., hereby certify that on this 6th day of March, 2000, I served a true copy of the foregoing **"REPLY COMMENTS OF AMSC SUBSIDIARY CORPORATION"** by first class United States Mail, postage prepaid, upon the following:

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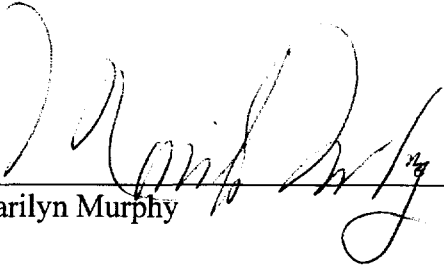
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